

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

ELIZABETH GOODWIN,  
*as Administrator of*  
*the Estate of other*  
BRIAN GARBER,

Case No. 1:15-cv-210  
Cleveland, Ohio

Plaintiff,

vs.

TUESDAY, FEBRUARY 12, 2019

RAYMOND FRAZIER,

Defendant.

TRANSCRIPT OF FINAL PRETRIAL CONFERENCE PROCEEDINGS  
BEFORE THE HONORABLE WILLIAM H. BAUGHMAN, JR.  
UNITED STATES MAGISTRATE JUDGE

Chief Court Reporter: Sarah E. Nageotte, RDR, CRR, CRC  
United States District Court  
801 West Superior Avenue  
Court Reporters 7-189  
Cleveland, Ohio 44113  
(216) 357-7186

Proceedings recorded by mechanical stenography, transcript  
produced by computer-aided transcription.

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1 (Proceedings commenced at 1:15 p.m.)

2 - - -

3 THE COURT: Mr. DeVan, call the case.

4 COURTROOM DEPUTY: The case before the Court

13:16:27 5 today is 1:15-cv-210, Elizabeth Goodwin versus Raymond

6 Frazier, et al.

7 THE COURT: Counsel for the plaintiffs, please

8 state for the -- for the plaintiff, please state your

9 appearances for the record.

13:16:46 10 MR. GILBERT: Thank you, Your Honor.

11 My name is Terry Gilbert, along with Jacqueline Greene

12 and Chance Douglas for the plaintiff.

13 THE COURT: And I should mention that for

14 purposes of this final pretrial, counsel may remain seated

13:16:59 15 when they address the Court; however, speak into the

16 microphones in front of you so that our court reporter can

17 pick up your comments.

18 And counsel for the defendants, please state your

19 appearances and introduce your clients.

13:17:10 20 MR. DOWNEY: Thank you, Your Honor.

21 My name is Dan Downey and I'm here on behalf of Deputy

22 Knee, Deputy Nicholson, and Deputy Frazier.

23 MS. WILLIAMSON: I'm Melanie Williamson.

24 THE COURT: This is the final pretrial in this

13:17:23 25 case, the case being set for trial to begin on Tuesday,

1 February 19th.

2 We are going to discuss the trial and some issues that  
3 remain to be worked out before trial, and I'm going to  
4 proceed slowly here. If you have any questions, then please  
13:17:49 5 let me know. I want to make sure we're all on the same  
6 page.

7 I draw your attention initially to three orders that  
8 have been filed in this case which will more or less set out  
9 the ground rules for the trial.

13:18:04 10 The first one is ECF Number 113, the amended trial  
11 order.

12 ECF Number 123, which is the supplemental trial order.

13 And entered today, ECF Number 129, it's a short order,  
14 and it has to do with preparations to ensure that witnesses  
13:18:31 15 are available to testify and the responsibilities with  
16 respect to those preparations, both to opposing counsel and  
17 to the Court.

18 Is there any questions concerning any of these orders?

19 MR. GILBERT: Procedural question.

13:18:49 20 THE COURT: Sure.

21 MR. GILBERT: So I have to say, I was a little  
22 bit surprised at the total ban on asking for sidebars during  
23 the course of this trial.

24 I think that there are times in a trial where counsel  
13:19:11 25 needs to ask for a trial -- a sidebar because of the

1 seriousness of the objection, which the Court may or may not  
2 understand, and I would hope that the Court would trust the  
3 lawyers, all of whom are very experienced, not to abuse that  
4 privilege.

13:19:33 5 Sometimes things come -- could come in that are  
6 prejudicial. Sometimes things can come in that may be  
7 grounds for a mistrial. Without the ability to come to the  
8 sidebar and briefly address those issues, so the Court is in  
9 sync with what we're concerned about, it's not going to  
13:19:58 10 delay this trial that much and it might avoid problems down  
11 the road.

12 THE COURT: First of all, it's not a total ban  
13 on sidebars. It merely provides -- the order merely  
14 provides that if counsel want a sidebar, they're to request  
13:20:12 15 it, and then the Court will determine whether or not to hold  
16 it.

17 So it's not that there will never be a sidebar. It's  
18 merely that it must be requested, and I will immediately  
19 make a decision as to whether or not I think I need it.

13:20:25 20 And I'm flexible. You've tried a case --

21 MR. GILBERT: Right. When I read it --

22 THE COURT: -- before me.

23 MR. GILBERT: Where is that part about the  
24 sidebars?

13:20:43 25 (Pause in Proceedings)

1 MR. GILBERT: I'm sorry. But when I read it,  
2 I didn't notice the -- the ability to request one.

3 THE COURT: Right.

4 MR. GILBERT: I'm sorry.

13:20:52 5 THE COURT: So I'll be reasonable.

6 MR. GILBERT: Yeah.

7 THE COURT: Any other questions about these  
8 orders?

9 MS. WILLIAMSON: Your Honor, I have a  
13:21:00 10 question.

11 Regarding voir dire, will the attorneys be permitted  
12 to conduct follow-up examination based on the questions that  
13 you ask?

14 THE COURT: Yes. You're going to have  
13:21:10 15 20 minutes to do whatever you want.

16 MS. WILLIAMSON: Okay.

17 THE COURT: Each side is going to have  
18 20 minutes to do whatever they want.

19 I don't want to get anecdotal here, but I had the  
13:21:21 20 experience of being called for jury duty over in state court  
21 about three years ago, and, actually, did get called up,  
22 called up with the panel. I saw a very effective voir dire  
23 done by an attorney there that was not argumentative, that I  
24 thought was very helpful in providing information concerning  
13:21:41 25 certain jurors, and that has somewhat affected my thoughts

1 on letting counsel have more time.

2 Usually, I give ten minutes. But I'm going to give  
3 20 minutes and we'll see how it goes. So that -- yes, you  
4 will be able to for 20 minutes, and if I feel like more time  
13:22:05 5 is necessary, again, I'll be reasonable and consider giving  
6 more time. But at least 20 minutes to ask questions of --  
7 of the panel.

8 MR. DOWNEY: If I may, Your Honor, just for a  
9 follow-up.

13:22:17 10 If -- say we're questioning a potential juror and  
11 there's a need to do a sidebar where they come up, sit next  
12 to you and the questions are asked, does that come out of  
13 our time or how would that work?

14 THE COURT: No. It wouldn't come out of your  
13:22:33 15 time.

16 I have had cases, especially criminal cases, where  
17 there has been information that's been inquired about that  
18 prospective jurors just don't want to speak about in open  
19 court, and also there are some questions that shouldn't be  
13:22:53 20 answered in open court because the experiences of the  
21 jurors, that may affect their view of the case, is not  
22 something that should be published to everybody.

23 So I had one situation where I felt like a priest in a  
24 confessional because I had a line to the back of the  
13:23:15 25 courtroom where people wanted to talk to the Court and

1 counsel confidentially.

2 And so, that will be provided for and we'll -- we'll  
3 just have to see how it goes.

4 MR. DOWNEY: If I may, Your Honor, one other  
13:23:30 5 question just about timing.

6 I've only done a couple of these where we timed them,  
7 and my experience was that the Court issues an order at the  
8 end of the day indicating how much time each --

9 THE COURT: And that's exactly what we'll do.  
13:23:41 10 We'll tell you how much time you've used.

11 Any other questions concerning the governing pretrial  
12 orders here that the Court's entered?

13 All right. Let's -- let's start with voir dire.

14 The parties have proposed questions for the Court to  
13:23:59 15 ask, and all of these questions seem to be reasonable, and I  
16 will have either already worked them into the questions that  
17 I prepared, or I will work them into the questions that I  
18 prepared.

19 And then, after I'm -- I'm finished, the -- there will  
13:24:25 20 be the opportunity for counsel to question the potential  
21 jurors.

22 We're bringing up a panel of 30. We'll seat eight.  
23 And they will be arranged in the courtroom. Every juror  
24 gets a number, every potential juror gets a number, and we  
13:24:51 25 start with the -- the low numbers in the box, and then it



1 will extend back into the courtroom. But we'll make sure  
2 that everyone knows exactly what the -- what the seating is  
3 and where the jurors can be located.

4 The other practice that we have in this court, and you  
13:25:09 5 may be aware of this, is that for purposes of privacy, we do  
6 not use their names. We refer to them by number. It's very  
7 impersonal. This was put in some time ago, and, quite  
8 frankly, I wish it were otherwise. But if a transcript of  
9 the voir dire is prepared and we use names, then all that  
13:25:33 10 would have to be redacted.

11 So in order to avoid -- avoid to having to do manual  
12 redaction by the court reporter, we just refer to them by  
13 number. So even though you will have their names, please  
14 don't refer to them by their names, refer to them by their  
13:25:49 15 numbers.

16 There will be the standard jury questionnaire that  
17 they will complete and counsel will have a copy, and I'll  
18 give you some time to look that over before we get started.

19 All right. And the standard questionnaire is an  
13:26:09 20 appendix to the local rules, so if you need -- if you want  
21 to see it and refresh your recollection as to what that  
22 consists of, then take a look there. And if for some reason  
23 you can't find it, contact Kyle and he'll make sure you get  
24 a copy in advance of the trial.

13:26:30 25 There's something else I wanted to say about jury

1 selection. Oh, it will come to me. I think I covered all  
2 of it, unless you have any questions.

3 MR. GILBERT: Judge, do you have --

4 THE COURT: Mr. Gilbert.

13:26:49 5 MR. GILBERT: Do you have a standard  
6 preliminary instruction for the jury?

7 THE COURT: Yes, I do.

8 MR. GILBERT: I assume it's just the basic?

9 THE COURT: It's just standard --

13:26:58 10 MR. GILBERT: Yeah. Okay.

11 THE COURT: -- basic standard instruction.

12 And the -- there will be an introductory instruction,  
13 and then, after the jury is impaneled, then there will be  
14 another introductory instruction before opening statements.

13:27:18 15 MR. GILBERT: And the preliminary statement  
16 that we have agreed to --

17 THE COURT: Yes. I wanted to talk to you  
18 about that as to when you think it's most appropriate to  
19 read that stip -- yes, your agreed-to opening statement will  
13:27:36 20 be part of the instruction.

21 But I want to talk to you also in the course of this  
22 pretrial about your stipulation and when you think it would  
23 be most appropriate to read that to the jury. So we'll get  
24 to that.

13:27:49 25 The procedure for challenges for cause and peremptory

1 challenges are set forth in my order. I'm going to give  
2 three peremptories to each side. And we'll pass the sheet.  
3 It's all in there. It's all in my order. If you have any  
4 questions about it, I'll be happy to entertain it, but I  
13:28:17 5 think it's the procedure that most of the judges in this  
6 court use for purposes of peremptory challenges.

7 All right. We'll then go into opening statements.  
8 20 minutes per side. And that is in addition to your 10  
9 hours, not part of your 10 hours. And I trust that you will  
13:28:43 10 be -- give them a roadmap as to what the evidence will show.  
11 You won't be argumentative, et cetera, and so forth. We all  
12 know what the ground rules are for opening statement, so I  
13 don't have to repeat that.

14 Now, with respect to the stipulation, since it's come  
13:29:02 15 up, this stipulation will be read to the jury.

16 Does counsel have -- have thoughts about when it would  
17 be most appropriate to read it?

18 MR. GILBERT: Well, I think it should be read  
19 maybe to the entire panel because there may be people who  
13:29:24 20 might feel uncomfortable sitting on a case like this.

21 I'm just thinking that at some point before the voir  
22 dire that that statement might -- the jury may want to know  
23 what the case is about, the prospective jury.

24 THE COURT: Yes. And what you've agreed to  
13:29:50 25 is -- it's fairly general.

1 MR. GILBERT: Right.

2 THE COURT: Right.

3 MR. GILBERT: I mean, you know, I can imagine  
4 somebody may think: Well, I'm never going to sit on a case  
13:30:03 5 where the police are involved. Or I can never be able to be  
6 fair in a case like this.

7 I hope it doesn't turn out to that, but it's possible.

8 MR. DOWNEY: If I may, Your Honor.

9 I think the points Mr. Gilbert brings up are addressed  
13:30:19 10 in the voir dire questions both parties have submitted. In  
11 my experience, stipulations or a statement would be read to  
12 the jury after they've been impaneled prior to opening.  
13 That's just been my experience and I think it's worked  
14 appropriately.

13:30:30 15 I don't think that either side would want to  
16 necessarily have somebody biased in a certain way before the  
17 Court's had an opportunity to question them, from our  
18 perspective.

19 MR. GILBERT: I've been reminded that in  
13:30:54 20 proposed voir dire questions, that's addressed.

21 So I'll withdraw that comment.

22 THE COURT: Okay. I don't think it's  
23 necessary to read the stipulation as part of the voir dire.  
24 It may be worthwhile to read it -- read the stipulation  
13:31:11 25 prior to opening statement, and then, at the close of all

1 the evidence, read it again to emphasize that these are  
2 facts that have been agreed to by the parties and they are  
3 to consider them as having been proven for purposes of this  
4 case.

13:31:28 5 MR. DOWNEY: We agree, Your Honor.

6 THE COURT: All right. So that's the way  
7 we'll proceed with that.

8 So we have opening statement. And then -- and then,  
9 we're going to go forward with plaintiff's case, followed by  
13:31:41 10 defendants' case.

11 I want to make sure that -- that I have the witness  
12 lists, and I know that they were filed early on, but nothing  
13 has been filed recently in terms of witnesses that the  
14 parties intend to present.

13:32:02 15 So is there a document that was previously filed that  
16 represents -- or documents previously filed on the docket  
17 that represent what -- the list that each party -- list of  
18 witnesses that each party intends to call?

19 MR. GILBERT: There is.

13:32:23 20 There is, Judge, a witness list that we filed on  
21 November 29th.

22 THE COURT: And what's the ECF Number on that?

23 MR. GILBERT: Number 105.

24 THE COURT: 105.

13:32:38 25 And for the defendants?

1 MS. WILLIAMSON: Doc 49.

2 THE COURT: 49?

3 MS. WILLIAMSON: Yes.

4 MR. GILBERT: But I would say that we are in

13:32:50 5 the process of reducing that, given the -- obviously, the --

6 some of the orders you --

7 THE COURT: Right.

8 MR. GILBERT: -- and other reasons --

9 THE COURT: And that's the point for my

13:33:02 10 inquiry. The lists I would expect to be impacted by the

11 rulings in limine.

12 And could you each have an updated list for the Court  
13 prior to the beginning of trial?

14 MS. WILLIAMSON: Yes, Your Honor.

13:33:21 15 MR. DOWNEY: We'd prefer, Your Honor, if it

16 was sooner than that, just so -- from a preparation

17 standpoint.

18 THE COURT: Right. So how about by Thursday?

19 MR. GILBERT: How about Friday?

13:33:33 20 THE COURT: Friday. Okay. By Friday to file

21 an updated list of witnesses for each.

22 And I have the -- I have the same question concerning  
23 exhibits. You recently filed your Joint Exhibit list.

24 That's ECF Number 124. But I don't recall any updated

13:34:13 25 exhibit lists being filed.

1           So what is the most updated exhibit list for each of  
2           the parties?

3                   MR. GILBERT: I mean, it would be the same.

4                   THE COURT: It would be part of 105?

13:34:30 5                   MR. GILBERT: Well, we have 106 and 124.

6                   THE COURT: 106 and 124?

7                   MR. GILBERT: The 124 is the Joint Exhibit  
8                   list.

9                   THE COURT: All right. And is it different  
13:34:40 10                  from what you just filed?

11                   MR. GILBERT: No. This was -- the Joint  
12                   Exhibit list is what we just filed today.

13                   THE COURT: All right. That's 124.

14                   MR. GILBERT: 124.

13:34:51 15                   THE COURT: Okay. So --

16                   MR. GILBERT: Our Plaintiff's Exhibit --

17                   THE COURT: Plaintiff's list was 106.

18                   MR. GILBERT: 106, and that was filed  
19                   November 29th.

13:35:01 20                   THE COURT: All right.

21                   MR. GILBERT: And we're still evaluating the  
22                   exhibits.

23                   THE COURT: Okay.

24                   MR. GILBERT: Mainly because of your order  
13:35:08 25                   limiting certain witnesses.

1 THE COURT: Right.

2 And defense -- defense counsel, what is your most  
3 recent witness [sic] list?

4 MR. DOWNEY: He said exhibit list.

13:35:28 5 MS. WILLIAMSON: Yes. I'm looking.

6 (Pause in Proceedings)

7 MS. WILLIAMSON: Doc 72.

8 THE COURT: 72.

9 And it makes sense to me for both of you to do an  
13:35:47 10 updated list by Friday.

11 MR. GILBERT: I would just add, Judge, that a  
12 lot of the documents here and items are not necessarily  
13 going to be offered into evidence but might be used for  
14 impeachment, which you cannot always know.

13:36:06 15 THE COURT: Right. You can't anticipate.

16 MR. GILBERT: Right.

17 THE COURT: But I think at least that it's  
18 helpful to have them identified prior to trial.

19 MR. GILBERT: Right.

13:36:13 20 THE COURT: All right. So, by Friday, counsel  
21 are to file the updated lists of exhibits.

22 All right. I do want to emphasize what I put in the  
23 latest order that I entered, which was the order of today,  
24 about anticipating who is going to be testifying.

13:36:52 25 I have used this practice consistently and have found,



1 number one, that counsel are very cooperative in this  
2 regard, which has always been refreshing; but, two, I have,  
3 except perhaps in very rare circumstances, had a situation  
4 where we've had dead time, and so, I would appreciate your  
13:37:14 5 efforts and your cooperation in making sure that the time  
6 that we set aside to hear testimony, that witnesses are here  
7 and they're ready to go.

8 All right. And, again, I will emphasize that. Two  
9 things: Number one, we'll deal with exhibits at the close  
13:37:43 10 of your respective cases, and that, however, to the extent  
11 you want the exhibit published to the jury, that it will  
12 have to be with leave of the Court. So you will ask to  
13 publish it, and then, if there's some question about whether  
14 it should be published, then I can take it up at that time.

13:38:14 15 All right. The trial is going to go forward in  
16 Courtroom 17B. It has all the electronic capability that we  
17 have here at the court. And although I prefer the  
18 Magistrate Judge's courtrooms, unfortunately, we are not  
19 necessarily state of the art, even down on 9 where we do  
13:38:36 20 have more technology than we have up here. So this will be  
21 up in 17B.

22 And as I understand it, counsel are making  
23 arrangements with Mr. DeVan to come over and to inspect the  
24 courtroom and to try out the equipment in advance of the  
13:38:56 25 trial, and I suggest that you do that so that we don't have

1 technical problems that -- that take place during the course  
2 of the trial.

3 All right?

4 MR. GILBERT: Sorry. Just one other question,  
13:39:29 5 Judge.

6 In opening and closing statements, do you require  
7 counsel to be at the podium?

8 THE COURT: No. As a trial lawyer, I always  
9 preferred to have some latitude. You don't want to get up  
13:39:48 10 in the jury's face, and I'm not going to let you do that,  
11 but, certainly, you can move away from the podium.

12 And when I tried cases, I moved away from the podium  
13 every opportunity that I had and positioned myself in the  
14 courtroom strategically.

13:40:05 15 So I'm --

16 MR. GILBERT: I think that would also go for  
17 the voir dire because --

18 THE COURT: Right.

19 MR. GILBERT: All right.

13:40:12 20 THE COURT: Right. Now, the only caveat is  
21 the court reporter has to hear you.

22 MR. GILBERT: Exactly.

23 THE COURT: So if we're having some --

24 MR. GILBERT: They have to hear the jury.

13:40:23 25 THE COURT: And we can check and have a

1 microphone. There is a portable mic. So if that's a  
2 problem with -- with the audio being heard throughout the  
3 courtroom, and especially by the court reporter, then we can  
4 make arrangements for that. So that's a good question. I'm  
13:40:41 5 glad you brought that up.

6 Certainly, if you prefer to just do all of your  
7 questioning and examination and cross-examination from the  
8 podium, and your opening and closing, that's your -- you  
9 know, that's your decision.

13:40:58 10 MR. DOWNEY: Thank you, Your Honor.

11 I had one other question procedural.

12 Mr. Gilbert and I had talked yesterday about Ms.  
13 Knowlton being called in their case on Thursday and that it  
14 would be preferable if she comes up once for the trial, and  
13:41:12 15 Mr. Gilbert was agreeable to me I think examining her in his  
16 case.

17 THE COURT: Right. With agreement of counsel,  
18 if -- if you want to have a witness only testify once,  
19 then -- then you can do that. I understand that that makes  
13:41:34 20 sense for a number of reasons and that would mean -- so  
21 there would also be examination by the other side that would  
22 be complete and cover everything that the witness would  
23 testify to, even if the witness were called back as part of  
24 the defendants' case, so --

13:41:53 25 MR. GILBERT: Yeah. We have no problem with

1 that.

2 THE COURT: All right. So as long as you're  
3 in agreement with respect to any witness that you believe  
4 that's suitable for, then that's fine with me.

13:42:07 5 MR. DOWNEY: Thank you, Your Honor.

6 THE COURT: Okay. Mr. Gilbert, you filed a  
7 motion today?

8 MR. GILBERT: Yes, we did.

9 THE COURT: And there hasn't been a response  
13:42:22 10 on it, of course, yet.

11 I want to focus on -- on the first part of your  
12 motion: Crime scene photographs.

13 MR. GILBERT: So --

14 THE COURT: Well, I've read your brief.

13:42:43 15 MR. GILBERT: Okay.

16 THE COURT: And let me just say this: Perhaps  
17 the compromise here is to permit one black and white photo  
18 taken by the Richland County Sheriff's Office that shows the  
19 position of the remote in relationship to the body. Not  
13:43:14 20 color. Black and white.

21 So with respect to that, I'll hear you first, and then  
22 I'll hear defense -- defense counsel.

23 MR. GILBERT: Right. I mean, I think you  
24 understand the importance of the location of the body and  
13:43:29 25 the remote.

1 THE COURT: Well, you've set it out and I --

2 MR. GILBERT: Yeah. And it's --

3 THE COURT: And that's certainly facts that  
4 you are -- that you are free to develop during the course of  
13:43:43 5 this case.

6 MR. GILBERT: And we need the photographs in  
7 order to do that.

8 Also, we don't think that this picture is particularly  
9 gruesome. I mean, frankly, it looks like somebody is  
13:43:56 10 sleeping.

11 THE COURT: Well, especially in black and  
12 white. I think that really takes the edge off of it and I  
13 don't see what color adds to it.

14 MR. GILBERT: But we need two. We need two  
13:44:04 15 photographs. One is --

16 THE COURT: Why do you need two?

17 MR. GILBERT: Because there is -- because  
18 there -- one picture has -- was taken earlier, before the  
19 EMS --

13:44:16 20 THE COURT: Yes.

21 MR. GILBERT: -- representative came.

22 THE COURT: Wouldn't that be the most  
23 probative of the three photographs you have?

24 MR. GILBERT: Well, there's a reason why we  
13:44:24 25 want both.

1           Because of the stickers on the body that are for the  
2           electrodes that were found -- that were placed on the  
3           decedent by the EMS technician that arrived named Richard  
4           Compton who is going to be testifying, when he came in,  
13:44:47 5           he -- he administered the first aid or heart monitor to  
6           determine if Mr. Garber was alive.

7           The --

8           THE COURT:   So what does the photograph with  
9           the electrodes add?

13:45:06 10           MR. GILBERT:   Because -- because the --  
11           because nobody, among the three defendants, need -- nobody  
12           in the room between the time of Brian Garber's shooting  
13           until a prosecutor came in the room, at this point where the  
14           numbers are and the electrodes are, to say that they saw a  
13:45:34 15           remote.

16           THE COURT:   Well -- but this photograph taken  
17           by the Richland County Sheriff's Office was earlier in time  
18           and the remote's there.

19           MR. GILBERT:   Right.

13:45:45 20           THE COURT:   And it appears to be -- it appears  
21           to be more or less in the same position in the ones taken by  
22           BCI.

23           MR. GILBERT:   Right.

24           THE COURT:   So I don't see what that adds.

13:45:53 25           MR. GILBERT:   Well, we feel that it could have

1       been -- it could have been moved at some point during the --  
2       during this period of time.

3               And there are different perspectives as to where the  
4       officers were standing that we need to have the middle one,  
13:46:19 5       because it shows the -- a broader picture of the room with  
6       the body on it.

7               And I'm not -- I'm not going to argue the whole case  
8       right now.

9                       THE COURT:   Okay.   I understand.   I  
13:46:33 10       understand.

11               MR. GILBERT:   Trust me --

12               THE COURT:   I want to hear from the other  
13       side.

14               MR. GILBERT:   Right.   But I'm not done yet,  
13:46:36 15       okay?

16               MR. DOWNEY:   I plan to argue the whole case,  
17       Your Honor.   No.

18               We think that the Court was correct in its initial  
19       ruling, Your Honor.   The defense perspective about the  
13:46:49 20       remote is that there is other evidence that links it to Mr.  
21       Garber at the time of the shooting through Matthew Garber  
22       observing it under his shirt.

23               We feel like delving into the remote, the location of  
24       the remote, is just another attempt to sort of circle back  
13:47:04 25       into the conspiracy theory about the remote being planted

1 when there's absolutely no evidence of that. And as the  
2 Court noted, the photographs both show it.

3 So from our perspective, this is not something that  
4 would be helpful to the jury, and potentially prejudicial if  
13:47:20 5 the plaintiff is given latitude to pursue that line at  
6 trial.

7 And also, Your Honor, we did just receive their --  
8 their reconsideration this morning at 10:00. There are --  
9 you know, we would prefer the opportunity to respond in  
13:47:34 10 writing as well, if the Court was inclined to permit that,  
11 so that we could file a document of record.

12 Although, I would understand the Court's position that  
13 this has been in addressed in prior motions and a prior  
14 ruling.

13:47:46 15 THE COURT: I think it has.

16 And as I say, I think a reasonable compromise is to  
17 let the one photo, which has 101-1411, in in black and white  
18 form.

19 And it's the earliest photo that was taken. It shows  
13:48:01 20 the remote. It shows the remote in relationship to the  
21 body. And then each side can -- can make their arguments  
22 respectively.

23 So --

24 MR. DOWNEY: Your Honor, would you mind  
13:48:18 25 repeating that number on that photo?



1 THE COURT: 101-1411.

2 MR. DOWNEY: Thank you, Your Honor.

3 MR. GILBERT: So there is -- how will that be  
4 transformed from -- do you want us to do the black and  
13:48:33 5 white?

6 THE COURT: Yes. I can --

7 MR. GILBERT: Maybe lighten it up a little bit  
8 so you can see it better?

9 THE COURT: Well, it's the position of the

13:48:42 10 remote to the body. Certainly -- certainly, it would be  
11 acceptable just to have it this way. But I know from my  
12 iPhone, I can hit a black and white option and it converts a  
13 color into a black and white --

14 MR. GILBERT: All right.

13:48:57 15 THE COURT: -- so it can be done.

16 And as far as the second part of this motion, I think  
17 that it has been -- the trajectory presentation, that's been  
18 briefed and argued and my ruling stands.

19 MR. GILBERT: Well, can we put something on  
13:49:18 20 the record at least?

21 THE COURT: Sure.

22 MR. GILBERT: Okay.

23 THE COURT: Go ahead.

24 MR. GILBERT: So, I mean, we don't understand  
13:49:24 25 the reasoning of the Court because this is a demonstrative

1 exhibit. It's not going to be offered into evidence. It's  
2 going to be used as -- as a guide for the jury.

3 And the Court can give a cautionary instruction  
4 about -- that it's just like an opening statement or  
13:49:47 5 PowerPoint presentation, it's what we believe the evidence  
6 will show. If we can't prove that trajectory in the -- in  
7 our case in chief, then the defendant could -- could send it  
8 back at us and argue that they put something in that wasn't  
9 accurate.

13:50:08 10 Also, we are willing to bring in the person who  
11 created the trajectory based on the diagram from Lisa  
12 Kohler, the medical examiner, that's in the evidence, and  
13 the angles of those trajectories are the exact same angles  
14 that were in the autopsy report and described in the autopsy  
13:50:34 15 report.

16 THE COURT: The parties -- the parties have  
17 stipulated that the proximate cause of Mr. Garber's death  
18 were the shots fired by the three officers.

19 MR. GILBERT: Yeah. But the positions of  
13:50:46 20 where the three defendants were when they shot is -- is very  
21 important, and the other -- and the defendants never agreed  
22 to even put that in the stipulation of fact.

23 THE COURT: Well, you have the x-rays.

24 MR. GILBERT: What's that?

13:51:00 25 THE COURT: The x-rays are in.

1 MR. GILBERT: Right. But it -- the jury  
2 should -- can see better the idea of the position of the  
3 defendants when they shot and the angle of the bullets.

4 I mean, it's important to show the trajectory. It's  
13:51:21 5 important to show who might have fired the various shots  
6 into which part of the body. There's no prejudice here to  
7 anybody. I don't see how the defendant is -- is in any way  
8 harmed by that.

9 If they don't think it's accurate, they can argue that  
13:51:39 10 it isn't.

11 THE COURT: Well, the shots were the prox --  
12 were the proximate cause of Mr. Garber's death, so why do we  
13 have --

14 MR. GILBERT: Are they willing to stipulate to  
13:51:54 15 that --

16 THE COURT: They stipulated to that before  
17 Judge --

18 MR. GILBERT: -- that each defendant fired  
19 shots that caused the death of --

13:52:02 20 THE COURT: I think they've stipulated to  
21 that.

22 MR. GILBERT: Are they -- I want to know from  
23 them right now, are they willing to stipulate to that?

24 THE COURT: Okay.

13:52:09 25 MR. GILBERT: Because they never have.

1 THE COURT: Is that what you stipulated?  
2 That's how I understood the record.

3 MR. DOWNEY: It's not, Your Honor.

4 Deputy Nicholson's gun jammed, and we don't know  
13:52:20 5 whether a bullet from Deputy Nicholson's entered -- we  
6 agreed that Mr. Garber tragically passed away as a result of  
7 being shot and these officers were present.

8 And, you know, from our perspective, Your Honor, and  
9 Ms. Williamson is prepared to address the arguments again  
13:52:35 10 regarding, you know, the -- the demonstrative, as Mr.  
11 Gilbert calls it, that we believe is founded in basically  
12 bringing in an expert after the fact and addressing location  
13 and trajectory when it's not really an issue in the case and  
14 never was when the case was pending in a discovery period.

13:52:54 15 So from our perspective, you know, and Ms. Williamson  
16 can address Dr. Kohler as well --

17 MS. WILLIAMSON: And --

18 THE COURT: Well, again, I think Mr. Gilbert's  
19 question is a fair one.

13:53:05 20 Are you stipulating that the proximate cause of Mr.  
21 Garber's death is the gunfire from the -- from the three  
22 deputies?

23 MR. DOWNEY: I think we have --

24 THE COURT: Or are you going to say that one  
13:53:23 25 didn't fire at all because the gun was malfunctioning?

1 MR. DOWNEY: They all fired. We just know his  
2 -- that two bullets went out of I think Deputy Nicholson's  
3 gun. I use that as an example.

4 I think the stipulation we put as a matter of record,  
13:53:36 5 Your Honor. I would refer back -- to the Court to that. I  
6 mean --

7 THE COURT: What's --

8 MR. DOWNEY: -- I don't want to say something  
9 inconsistent with the record, but I believe it's in the  
13:53:44 10 record what we stipulated to.

11 THE COURT: When you say the record, are you  
12 talking about the transcript --

13 MR. DOWNEY: Correct.

14 THE COURT: -- before Judge Polster?

13:53:52 15 MS. WILLIAMSON: Yes.

16 MR. DOWNEY: Yes.

17 THE COURT: Well, as I read the transcript,  
18 proximate cause was stipulated.

19 MR. DOWNEY: Correct, Your Honor.

13:53:56 20 THE COURT: So, therefore, that isn't a  
21 question.

22 MR. GILBERT: We don't want to be in a  
23 situation where they ambush us at the end of the trial and  
24 say: You didn't prove that Nicholson caused the death, and,  
13:54:07 25 therefore, he should be dismissed out of the case.

1 I mean, if we're going to get into piecemealing each  
2 of the defendants and whether they caused the death of Brian  
3 Garber, then we need the trajectory to show how it lines up  
4 with the -- the position of the -- of the defendants when  
13:54:26 5 they fired their guns.

6 THE COURT: Well, fair enough.

7 But all you need to -- all you need is a verdict  
8 against one, right?

9 And then you can recover all the damages that you can  
13:54:37 10 prove by a preponderance of the evidence. That's my  
11 understanding of how this works.

12 MR. GILBERT: Well, I mean, I think that  
13 the -- that's a nice consolation prize, but -- but, you  
14 know, the --

13:54:54 15 THE COURT: Why -- why is it a consolation  
16 prize?

17 MR. GILBERT: We have three defendants who  
18 used excessive force when they shot and killed Brian Garber  
19 with a barrage of shots that were -- we say are  
13:55:08 20 unjustifiable. There are three defendants in this case. We  
21 have the burden of proof. We should give -- we should be  
22 given some latitude to try to explain to the jury  
23 graphically how that lines up with the three defendants.

24 THE COURT: Well, are we really going to get  
13:55:26 25 into that in this trial, saying -- trying to determine,

1 based on trajectory, which bullets came out of which weapon,  
2 and, therefore, which shots were fatal and which weren't?  
3 Like the Brelo case. That's not what's going to happen  
4 here, is it?

13:55:44 5 MR. GILBERT: Well, I don't know what their --  
6 they're not willing to commit.

7 THE COURT: Well, I'm asking you.

8 MS. WILLIAMSON: Your Honor, I'd just like to  
9 bring to the Court's attention, plaintiff's counsel have  
13:55:55 10 indicated that Dr. Kohler, the medical examiner, would be  
11 here to explain and this is all based upon her diagram.

12 She has been deposed in this case. They did not, with  
13 their motion, submit her testimony as support, but in her  
14 deposition testimony, she indicated that she cannot make an  
13:56:14 15 assessment of where -- of where the body was at the time of  
16 the injury. She can only say here's where the injuries were  
17 because a body is mobile. And so, she can't make that  
18 determination.

19 She also indicated in her deposition testimony that  
13:56:29 20 she can't make an assessment as to where the officers were  
21 standing at the time. So I'm not quite sure how she can  
22 come in here and be useful to the plaintiffs.

23 THE COURT: Well, my question is this: Is  
24 this all relevant? Are you going to, at the end of the day,  
13:56:45 25 say that some officers should -- should not -- not be found

1       liable because there's not proximate cause?

2                   MR. DOWNEY: No. We stipulated to proximate  
3       cause, Your Honor. This is --

4                   THE COURT: Across the board.

13:57:00 5                   MR. DOWNEY: This case is about whether or not  
6       there was excessive force.

7                   THE COURT: Whether or not there was excessive  
8       force, not proximate cause.

9                   MR. DOWNEY: Correct.

13:57:07 10                  THE COURT: So we're not going to see a  
11       parsing out among the three officers of whose shot was fatal  
12       and whose wasn't fatal.

13                  MR. DOWNEY: That's correct, Your Honor.

14                  There were 16 shots fired. That's the record in the  
13:57:19 15       case that we have.

16                  THE COURT: And that was my understanding  
17       after reading Judge Polster's transcript.

18                  MR. DOWNEY: We believe that the force used  
19       was appropriate. Mr. Gilbert believes it wasn't.

13:57:29 20                  THE COURT: So I believe that that's not going  
21       to be an issue in the case and I'm not going to permit the  
22       evidence. There's better use of our time here.

23                  Now, we have some time before we get into instructions  
24       and verdict forms, and I've taken a look at -- I have it  
13:57:54 25       here. Let me just find it. There's a lot of documents up



1 here. ECF Number 85-2, the parties' proposed jury  
2 instructions. And there's -- as I recall, there's another  
3 document that has verdict forms that I've seen but I don't  
4 have here.

13:58:28 5 And there's a very useful index here that has all the  
6 ones that have been agreed to and all of the ones that each  
7 party has submitted that have not been agreed to.

8 There is a reference to the instructions given by then  
9 Chief Judge Oliver, I believe, in *Smith versus Jones*,  
13:59:02 10 1:13-cv-744. And comparing the two, it appears that,  
11 essentially, the ones that are not contested are  
12 substantially similar to the sum total of the instructions  
13 given in *Smith versus Jones*, that also being an excessive  
14 force case. Although, there, apparently proximate cause was  
13:59:30 15 at issue where it isn't here.

16 So my question is: Why don't we just go with what you  
17 agreed with? Why is that not sufficient?

18 And, in fact, I have some extra copies of *Smith versus*  
19 *Jones*, and I'll give those to you so you can look at those.

13:59:49 20 MS. GREENE: Judge, I'm sorry.

21 I'm afraid I don't understand the question you're  
22 asking.

23 THE COURT: All right. That was a long  
24 question. It was a compound question.

13:59:56 25 So point number one, in an excessive force case, Judge

1 Oliver -- and that case being *Smith versus Jones*,  
2 1:13-cv-744, the jury instructions being ECF Number 82 --  
3 Judge Oliver instructed the jury on liability and damages,  
4 and I believe this is the case where present counsel for the  
14:00:33 5 plaintiff was also representing the plaintiff.

6 MR. GILBERT: That's correct.

7 MS. GREENE: That's correct.

8 THE COURT: That's correct.

9 All right. So you're familiar with these  
14:00:41 10 instructions --

11 MR. GILBERT: Right.

12 THE COURT: -- or at least you were at one  
13 point in time familiar with these instructions.

14 And, in fact, I believe you cite these instructions  
14:00:50 15 as -- as the legal basis for some of the instructions that  
16 have been proposed. So that's point number one.

17 Point number two, in comparing what Judge Oliver gave  
18 in *Smith versus Jones* with what you have agreed to, jointly  
19 proposed jury instructions, that they -- what he gave and  
14:01:18 20 what you've agreed to appear to be substantially similar  
21 with respect to both liability and damages.

22 And my question is then -- it appears to be  
23 comprehensive. His instructions in *Smith versus Jones* make  
24 sense to me. Why do we really need to get into these  
14:01:42 25 instructions where -- where you can't agree? Why not just

1 go with something substantially similar to what Judge Oliver  
2 did in *Smith versus Jones*, which is -- which is, for the  
3 most part, what you've agreed to?

4 MS. GREENE: Judge, plaintiff would be willing  
14:02:01 5 to accept --

6 THE COURT: Excuse me?

7 MS. GREENE: Plaintiff would be willing to  
8 accept something substantially similar to the *Smith v.*  
9 *Jones*.

14:02:10 10 THE COURT: I don't expect you to make a  
11 commitment today, but take it into consideration.

12 MS. WILLIAMSON: Thank you.

13 THE COURT: Let me just say that, as is clear,  
14 what we basically have here is a Section 1983 excessive  
14:02:24 15 force claim, and we have a state assault and battery claim,  
16 and we have a wrongful death claim, and we have a survivors  
17 claim. But I do want to ask about the survivors claim.

18 I've read quite a bit of case law in the last few days  
19 to put all the pieces together, and the case law in this  
14:02:50 20 circuit seems clear to me that this state law assault and  
21 battery claim, the liability standard, is the same as for  
22 excessive force. And so, therefore, to give two  
23 instructions on two different claims is potentially  
24 confusing to the jury. And I don't know whether that was  
14:03:11 25 what Judge Oliver was thinking in *Smith versus Jones*, but

1 what he did here makes sense to me.

2 And as you take a look at ECF Number 82, what he did  
3 was he instructed on excessive force, and then he instructed  
4 on damages for survivorship and wrongful death, and there's  
14:03:31 5 nothing in here about assault and battery because,  
6 basically, the standard is the same, so -- the standard for  
7 liability is the same.

8 So take that under consideration. We're going to  
9 revisit this as the trial -- as we get to that point in  
14:03:47 10 trial, but it seems to me that what Judge Oliver did here is  
11 a very well -- is a very well-crafted set of instructions  
12 and they're very clear and plain and provide a roadmap for  
13 the jury to work its way through this. It doesn't confuse  
14 them.

14:04:04 15 And if you want jury interrogatories, if -- if they're  
16 taken off of the instructions that Judge -- and I believe he  
17 may have given interrogatories in that case, too, you can  
18 check the docket and I'll check the docket -- but I believe  
19 that the approach he took here is -- is a constructive,  
14:04:24 20 helpful one, and is -- and it's certainly worthy of  
21 consideration and would get us to where we needed to be  
22 here.

23 All right.

24 MR. GILBERT: Judge, I would note, I don't  
14:04:39 25 think we have an assault claim.

1 Is that right?

2 MR. DOWNEY: I think that's right.

3 THE COURT: You don't have an assault and  
4 battery claim?

14:04:45 5 MR. GILBERT: No. We just have a reckless --

6 THE COURT: Well, reckless is not a  
7 freestanding cause of action. That's clear.

8 MR. GILBERT: No. It's a negligence, with a  
9 higher burden, under the state statute.

14:04:58 10 THE COURT: I took a look at your pleadings,  
11 and I -- and unless I'm really misreading it, I think you  
12 pled an assault and battery claim.

13 MR. GILBERT: I think we might -- if we did,  
14 we're going to dismiss it.

14:05:14 15 THE COURT: All right.

16 MR. GILBERT: We didn't have them --

17 THE COURT: All right. So that makes it even  
18 easier.

19 MR. GILBERT: All right.

14:05:19 20 THE COURT: And that -- and with that, it  
21 makes more sense to go with what Judge Oliver does.

22 MR. GILBERT: Right. Reckless is the -- the  
23 negligence claim --

24 THE COURT: Yeah. It's not freestanding. But  
14:05:30 25 I understand what you're saying.

1 MR. GILBERT: Yeah.

2 THE COURT: And I understand what you're  
3 saying. If it isn't -- if it isn't liability under  
4 excessive force, if it doesn't rise to that level, then it  
14:05:39 5 drops down to mere negligence and its -- and its immunity.

6 Objectively and reasonable is the buzzword for -- and  
7 the instructions that Judge Oliver gave and the instructions  
8 that you're proposing seem to be right on point with respect  
9 to excessive force, so it's -- it's up or down on excessive  
14:06:01 10 force, and if it's a finding of excessive force, then --  
11 then you go ahead and take a look at wrongful death and  
12 survivorship.

13 You're maintaining a survivorship claim? There were  
14 damages prior to death?

14:06:15 15 MR. GILBERT: Yes.

16 THE COURT: Okay. All right. Well, that's  
17 certainly your prerogative to pursue that and prove it and  
18 then --

19 MR. GILBERT: You know, everything is subject  
14:06:22 20 to the end of the case.

21 THE COURT: Oh, I understand that.

22 MR. GILBERT: So we'll want to have a -- we  
23 want to have a short conference anyway after the evidence is  
24 in.

14:06:29 25 THE COURT: Well, that's right.

1 MR. GILBERT: Right.

2 THE COURT: That's right. That's why I'm  
3 not -- I'm throwing this out for your consideration --

4 MR. GILBERT: Many things can change.

14:06:37 5 THE COURT: -- and I'm not saying that I'm  
6 casting -- I'm casting the instructions --

7 MR. GILBERT: Yeah.

8 THE COURT: -- and the interrogatories in  
9 stone at this point. It depends on how it comes in. And  
14:06:48 10 we'll see. We'll see at that point.

11 But I -- I think it's worthy to think about it now,  
12 worthwhile to think about it now, and to be looking to Judge  
13 Oliver to see if, in fact, that's a template that fits this  
14 case.

14:07:07 15 All right. Any other questions?

16 MR. DOWNEY: Your Honor, on days where we're  
17 in trial, is there the possibility to speak to the Court  
18 prior to starting? Do you want the --

19 THE COURT: Oh, we'll definitely do that.  
14:07:17 20 Yeah, we're definitely going to do that, because I'm going  
21 to want to go over the agenda for the day, see who is going  
22 to testify, and where we're at. Yeah, so that goes without  
23 saying. I think I say be here by 8:30.

24 MR. DOWNEY: Right.

14:07:34 25 THE COURT: And the jury will be seated at

1 9:00, and I'll come on the bench at 8:30, and we'll go over  
2 the day.

3 MR. DOWNEY: If I may, Your Honor.

4 I think, based on the Court's order, we'd likely get  
14:07:45 5 to witnesses on day one. Has that been your experience as  
6 well with your order?

7 THE COURT: Should be, unless something  
8 unusual goes on in the voir dire.

9 So we'll have the voir dire. Hopefully we can have  
14:07:55 10 the jury seated within a reasonable period of time, have  
11 opening statements, and then start with the witnesses.

12 MR. DOWNEY: Thank you, Your Honor.

13 THE COURT: All right. Okay. Anything  
14 further for the plaintiff?

14:08:07 15 MR. GILBERT: Yes, Your Honor.

16 A couple of -- a couple of issues --

17 THE COURT: Yes.

18 MR. GILBERT: -- of clarification.

19 So the Court issued an order that would exclude, in  
14:08:23 20 terms of the question of liability, only those facts which  
21 the defendants knew at the time that they confronted Brian  
22 Garber.

23 But in dialogue and discussions with defense counsel,  
24 a couple things had come up. One was prior attempted  
14:08:53 25 suicides, and another was the mental health history of Brian



1 Garber. All of this could come in from family members or  
2 medical records.

3 THE COURT: With respect to damages?

4 MR. GILBERT: Well, this is what we want to  
14:09:15 5 make sure is clarified.

6 We weren't sure in your order about the attempted  
7 suicide, whether that was for damages or for liability. It  
8 wouldn't seem to fit the liability because the defendants  
9 wouldn't have known that.

14:09:35 10 THE COURT: Right. Right.

11 MR. GILBERT: All right.

12 THE COURT: I --

13 MR. GILBERT: So because this is -- this might  
14 have to do with damages, that we have -- we have a  
14:09:45 15 cautionary instruction --

16 THE COURT: Anything --

17 MR. GILBERT: -- of some kind.

18 THE COURT: -- admitted strictly for purposes  
19 of damages, I'll give a cautionary instruction.

14:09:56 20 MR. GILBERT: Okay.

21 THE COURT: I realize there's some, perhaps,  
22 gray areas out there where that's going to be appropriate.

23 MR. GILBERT: Yeah.

24 THE COURT: I didn't think there was enough of  
14:10:06 25 a problem to bifurcate the trial, but --

1 MR. GILBERT: Yeah. And --

2 THE COURT: And -- and, again, I'm just going  
3 to ask the question here.

4 With respect to -- assuming that there's a finding of  
14:10:20 5 liability under the -- under the wrongful death, who -- who  
6 are the persons who are really going to be claiming that  
7 they're damaged? Is it -- it's certainly the children,  
8 right?

9 MR. GILBERT: Yes. Certainly the children.

14:10:33 10 THE COURT: In addition to the children, who?

11 MR. GILBERT: Well, it could -- it would also  
12 be the parents and the wife. But mainly the children.

13 THE COURT: Okay. All right. Well, with  
14 respect to the --

14:10:55 15 MR. GILBERT: Again --

16 THE COURT: With respect to his wife, I  
17 suppose that opens up a --

18 MR. GILBERT: Yeah.

19 THE COURT: -- a number -- a number of  
14:11:03 20 problematic areas.

21 MR. GILBERT: Right. And we will talk about  
22 that further --

23 THE COURT: All right.

24 MR. GILBERT: -- those issues.

14:11:10 25 THE COURT: Okay. Well, the leaner and

1 cleaner this is, the better.

2 MR. GILBERT: Agreed.

3 THE COURT: All right.

4 MR. DOWNEY: If I may, Your Honor.

14:11:19 5 Just to Mr. Gilbert's point about, you know, Mr.  
6 Garber's prior attempted suicides, we know that he's a  
7 troubled individual, but one issue from the defense  
8 standpoint that could potentially impact on motive when he  
9 was in the room with the officers with what he was doing is  
14:11:35 10 that he had attempted suicide in that very room a year  
11 earlier.

12 And I feel that that is something that might be  
13 probative as to what he was attempting to accomplish at the  
14 time that the officers were interacting --

14:11:45 15 THE COURT: But that didn't factor into the  
16 equation of why the officers did what they did. They didn't  
17 know that.

18 MR. DOWNEY: Thank you, Your Honor.

19 THE COURT: All right. So I'll just leave it  
14:11:56 20 at that.

21 All right. Anything else, Mr. Gilbert?

22 MR. GILBERT: Just consulting with my --

23 THE COURT: All right. Certainly.

24 MR. GILBERT: -- partner here.

14:12:20 25 I think -- I know when we walk out of the courtroom,

1 we're going to think of something else.

2 THE COURT: Well, it's -- it's not over.

3 MR. GILBERT: But we'll let you know.

4 THE COURT: It's not over until it's over.

14:12:29 5 MR. GILBERT: Right. Right.

6 MR. DOWNEY: The defendants will stipulate  
7 it's been a productive day, Your Honor.

8 We have nothing additional.

9 THE COURT: Excuse me?

14:12:35 10 MR. DOWNEY: It's been a productive day, and  
11 we have nothing additional.

12 THE COURT: All right. Very good.

13 I do want to talk -- well, obviously, there's still  
14 the question of settlement.

14:12:46 15 We spent a day and were not able to settle the case  
16 before, but I want to talk to each counsel, so just remain  
17 here after I go off the bench and Mr. DeVan will bring you  
18 in.

19 MR. GILBERT: Thank you, Judge.

14:13:00 20 THE COURT: And we'll just touch base on that  
21 question.

22 MR. DOWNEY: Thank you, Your Honor.

23 THE COURT: There being no further business  
24 before the Court, we are in recess.

14:13:08 25 COURTROOM DEPUTY: All rise.

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(Proceedings concluded at 2:13 p.m.)

**C E R T I F I C A T E**

I certify that the foregoing is a correct transcript  
of the record of proceedings in the above-entitled matter  
prepared from my stenotype notes.

<u>/s/ Sarah E. Nageotte</u>	<u>4/10/2019</u>
SARAH E. NAGEOTTE, RDR, CRR, CRC	DATE